

**UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE**

| | | |
|-------------------------|---|---------------------------|
| In re: |) | |
| |) | |
| BILLY G. ROLAND |) | DNS-RD Docket No. 07-0089 |
| and |) | |
| BILLY GRAY ROLAND, Ltd. |) | |
| |) | |
| Respondents |) | Decision and Order |

This Decision and Order is issued pursuant to 7 C.F. R. § 3017.890, in disposition of the appeal by Billy G. Roland and Billy Gray Roland, Ltd., an entity through which Billy G. Roland does business (“Respondents”), of the determinations by the U.S. Department of Agriculture Rural Development (“USDA RD”) debarring Mr. Roland and Billy Gray Roland, Ltd., for three years from participation in all “covered transactions” as that term is defined in 7 C.F.R. part 3017, subpart B. I am affirming the debarment determinations on the basis of my review of the administrative record upon which they are based that demonstrates ample, compelling and legally sufficient support for their issuance.

As explained at 7 C.F.R. § 3017.100, part 3017 was promulgated to satisfy requirements under Executive Orders for a government-wide system of debarment and suspension applicable to Department of Agriculture nonprocurement activities that has government-wide effect. Therefore, the debarments not only exclude Respondents from participating in covered transactions with USDA RD, they also exclude them from such participation with any other Federal Government entity.

On October 27, 2005, Mr. Roland was suspended from participating in Federal Government programs (Administrative Record, Tab T). Subsequently, on November 16,

2005, Mr. Roland was notified that USDA RD had initiated debarment proceedings against him and his associated entities (Administrative Record, Tab S). The notice provided Mr. Roland the opportunity to contest the proposed debarment. In accordance with his request to do so, a transcribed fact-finding proceeding was conducted on March 7, 2006 pursuant to 7 C.F.R. § 3017.840 (Administrative Record, Tab G). USDA RD, as the debarring official, was thereupon required by 7 C.F.R. § 3017.845 to base its decision:

- ...on all information contained in the official record. The official record includes-
- (1) All information in support of the debarring official's proposed debarment;
 - (2) Any further information and argument presented in support of, or in opposition to, the proposed debarment; and
 - (3) Any transcribed record of fact-finding proceedings.

7 C.F.R. § 3017.845. On March 7, 2007, USDA RD issued its determinations debarring Mr. Roland and his company from participating in covered transactions for three years, but gave him credit for the period of time he was previously suspended so that the debarments shall end on October 27, 2008 (Administrative Record, Tabs C and D).

Mr. Roland's appeal is pursuant to 7 C.F.R. § 3017.890, under which I am directed as the assigned appeals officer to:

- ...vacate the decision of the debarring official only if the officer determines that the decision is:
- (1) Not in accordance with law;
 - (2) Not based on the applicable standard of evidence; or
 - (3) Arbitrary and capricious and an abuse of discretion.

7 C.F.R. § 3017.890 (a). As the appeals officer, I am also subject to the following constraint:

- (b) The appeals officer will base his decision solely on the administrative record.

7 C.F.R. § 3017.890 (b). As I have previously stated, review of the administrative record amply demonstrates legally sufficient and compelling support for the debarment determinations by USDA RD.

The debarments were in response to alleged failures by Mr. Roland and the construction firm he controlled to properly perform obligations incurred from 1999 to 2005, in respect to four homes he undertook to build as a general contractor participating in a government program for the rural development of low cost housing. Under the program, USDA RD has the responsibility for assuring that the houses are properly built, and, when necessary for the homeowner's protection, to pay legitimate, unsatisfied liens filed by sub-contractors and suppliers of building materials.

The Administrative Record provides convincing and persuasive evidence that Mr. Roland routinely failed to meet his obligations to home owners, sub-contractors, suppliers of construction materials, and to USDA RD.

The Galvin home

As the general contractor for the construction of a single family dwelling for Ms. Beverly Galvin, under a contract that Mr. Roland signed on June 29, 1999, Mr. Roland failed to pay a sub-contractor and two suppliers of construction materials. They remained unpaid until USDA RD satisfied the liens they filed against the Galvin property. The existence of the liens was not disclosed by Mr. Roland when he filed a "Release by Claimants" on November 29, 1999. To the contrary, he falsely stated that the sub-contractor and the suppliers had been paid in full. Mr. Roland also failed to pay for construction plans he obtained and used for the dwelling until three years after its completion. Moreover, Mr. Roland failed to complete the Galvin home by September 30,

1999, as required by the construction contract and incurred liquidated damages under the contract for every day the home remained uncompleted beyond the completion date. Mr. Roland, despite Ms. Galvin's assertion of her right to the specified liquidated damages, paid her less than a third of the amount to which she was entitled.

Mr. Roland has asserted no convincing argument or evidence in defense of his actions. He argued that the sub-contractor and the suppliers were eventually paid and therefore the fact that liens were filed should not be used as a reason for his debarment. However, as the debarring official pointed out, the liens were satisfied by USDA RD and not by Mr. Roland's direct payment of them. Moreover, Mr. Roland made a false statement when he filed a "Release by Claimants" on November 29, 1999, and stated that he had by that date paid the sub-contractor and the two suppliers in full. He next argues that the construction delay that led to his paying Ms. Galvin less than the liquidated damages to which she was entitled was due to her request for different carpet than the type originally ordered. However, the debarring official found no approval for such change by a USDA RD official as the construction contract required before her request could be treated as a legitimate reason for delay in the construction.

The Grant home

As the general contractor for the construction of a home for Clinton and Joyce Grant, under a contract that Mr. Roland signed on February 21, 2001, Mr. Roland failed to pay a supplier of insulation for the home that was purchased through a sub-contractor. The supplier filed a lien on the home and has advised USDA RD that it is still unpaid. Under the terms of the Grant Construction Contract, General Conditions, Part V ("Obligation to Discharge Liens"), Mr. Roland as the General Contractor was obligated

to discharge all liens on the property associated with labor performed or materials furnished for the home's construction. Although Mr. Roland submitted a "Release By Claimants", the supplier advised USDA RD that it had never signed a release of its claim for the material and labor it supplied and states that it has never been paid.

Mr. Roland argued in his defense that the names of the homeowners on the lien were incorrect, that USDA RD had not notified him of the lien, and that the supplier had in fact been paid. In its debarment determination, USDA RD pointed out that even if the last name of the homeowners was inadvertently misstated, the lien attached to the property since the legal description of the property was correct, and that USDA RD had no obligation to notify Mr. Roland of the lien. Moreover, the record shows that his sub-contractor was aware of the lien's existence and asked the supplier, five years after it had been filed, to remove the lien because the claim had been paid. The supplier refused on the basis that its records did not show ever receiving payment and the sub-contractor could furnish no proof of payment. USDA RD pointed out to Mr. Roland that the person who he stated signed a release on behalf of this supplier differed from the person actually assigned by the supplier to this job, and USDA RD found the supplier's statements more credible than Mr. Roland's assertions. Finally, Mr. Roland asserted that he went to the courthouse and found no record of this lien. The supplier stated however, that the lien was never removed and it is still unpaid. USDA RD, as the debarring official, had the discretion to accept the word of the supplier over that of Mr. Roland who it found to be less credible.

The Calloway home

As the general contractor for the construction of a single family dwelling for the Calloway family, under a contract that Mr. Roland executed on February 3, 1999, Mr. Roland failed to pay a sub-contractor for work performed on the home. The sub-contractor remained unpaid until USDA RD paid \$10,271.21 to satisfy the balance owed to the sub-contractor that had filed a preliminary notice of lien rights for its unpaid work on the Calloway property. In addition, Mr. Roland failed to correct defective conditions in the construction of the home that his Builder's Warranty required him to correct within thirty days after receiving notice of the defects from the homeowner. In response to the homeowner's complaints, USDA RD staff visually inspected the property and confirmed that needed repairs had not been completed. At the end of the inspection, Mr. Roland assured USDA RD that the repairs would soon be made. However, more than five months after the inspection and almost ten months after the defects were first reported to Mr. Roland by the Calloway family, the needed repairs had still not been made despite repeated calls to Mr. Roland from the County caseworker assigned to assist the Calloway family.

Mr. Roland denied that an air conditioning unit he had installed needed to be replaced. But an air conditioning company that inspected the property explained that the unit he had installed was inadequate for the 4 people living in the house. Mr. Roland attempted to justify his failure to fix a broken window at the house on the basis of inclement weather, but he had known of the need to fix the window for almost a year before weather conditions interfered with repair efforts. He also tried to justify a fallen front porch column by blaming the tying of a dog to it, but as USDA RD pointed out, a

properly installed column should be able to resist being pulled out by a dog tied to it. In respect to a problem with the well he installed to serve the property, Mr. Roland claimed either more people were drawing water from it than it was designed to serve, or that it was the fault of his well contractor. USDA RD responded that as the general contractor, Mr. Roland had the overall responsibility for the way the well functioned and it should work properly even if more than the four residents were using it. USDA RD found on the basis of the evidence before it, that three of the defects were not repaired until more than a year after the time of required completion under the Builder's Warranty, and that there was no record of the well ever being properly repaired.

The Smith home

As the general contractor for the construction of a single family dwelling for Henry and Keshia Smith, under a contract executed on August 6, 2004, Mr. Roland failed to make timely repairs of various defects in the construction of this home as the contract required. Additionally, contrary to the terms of the construction contract, he sought approval for periodic payments before actual work had been performed and proper building permits had been obtained.

As was the case with the other homes, Mr. Roland has furnished a host of improbable excuses for his shoddy work and his failure to make necessary corrections in the manner and within the time required by the contract. He has asserted that various complaints by the Smiths arose from their moving into the home before its completion. However, Mr. Roland requested inspection of the home as being completed on a date before the Smiths moved in. Also Mr. Roland filed a "Release of Claimants" form before that date, which indicated that he had paid his sub-contractors for all of their work that

was by then completed. He has also asserted that the homeowner requested some of the sub-contractors and he should not be held accountable for defects attributable to their work. Nor should he be held accountable, he asserts, for work by sub-contractors after he gave them notice of needed repairs. As the general contractor, Mr. Roland is responsible under the construction contract, for shoddy work by his sub-contractors including that of those selected with his assent by the homeowner. Mr. Roland submitted various letters purportedly signed by Mr. Smith expressing satisfaction with the work. But Mr. Smith has not verified signing these letters and the debarment determination sent by USDA RD to Mr. Roland pointed out that the handwriting on them “appears very similar to your handwriting on documents you have acknowledged you wrote...” Moreover, in a letter by Keisha Smith dated February 14, 2005, she noted the many problems the Smiths had with Mr. Roland as their contractor and the continuing problems they were still having with their poorly built home.

In addition to his defenses respecting his practices in constructing these specific four homes, Mr. Roland sent USDA RD photographs of other homes he has constructed; a submission that he had always been satisfied in the past with the work of the principal sub-contractor he used to build these homes; and letters from suppliers and companies that have worked on other homes with Mr. Roland attesting to his acceptability as a contractor. However, as USDA RD pointed out in its determinations, none of these submissions refute the specific facts contained in the Notice of the Proposed Debarment.

Overall, the determinations to debar Mr. Roland and his company rest on an Administrative Record that demonstrates that he did not comply with the terms of the four construction contracts he entered into from 1999 to 2005. He failed to pay sub-

contractors and suppliers. He placed USDA RD in the position of having to pay sub-contractors and suppliers in his place to keep these low cost homes free from liens. He failed to complete construction of one of the homes on time, and then failed to fully pay liquidated damages to the homeowner as the governing contract required. He failed to remedy in a timely manner defects in the construction of these homes. The defenses Mr. Roland asserted against being debarred were, for good reasons, found by the debarring official to be implausible, unpersuasive and less credible than contrary evidence.

The administrative record contains credible and persuasive evidence that Mr. Roland and his company should be debarred for three years from participation in all “covered transactions” as that term is defined in 7 C.F.R. part 3017, subpart B, in that, as the debarring official found, the administrative record more than adequately demonstrated Respondents’:

(b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as—

- (1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;
- (2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or
- (3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction;

And

(d) Any other cause of so serious or compelling a nature that it affects your present responsibility.

7 C.F.R. § 3017.800. Accordingly, the following Order is being entered.

ORDER

It is this 8th day of June, 2007, ORDERED that the determinations by the U.S. Department of Agriculture Rural Development debarring Billy G. Roland and Billy Gray Roland, Ltd., for three years from participation in all “covered transactions” as that term is defined in 7 C.F.R. part 3017, subpart B, is hereby upheld and affirmed.

Victor W. Palmer
Administrative Law Judge

June 8, 2007